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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/407,531 | 09/28/1999 | ALAN NEWMAN | 357802000400 | 2877 |

7590 04/12/2002

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| EXAMINER |
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CHAVIS, JOHN Q

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| ART UNIT | PAPER NUMBER |
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2124

DATE MAILED: 04/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/407,531

Applicant
Newman et al.

Examiner
John Chavis

Art Unit
2122



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/28/99, and 11/22/99
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/28/99 is/are objected to by the Examiner; *fig. 4 should be labeled "prior art" Correction is required.*
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 20) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-7 (specifically, step a) indicate a step of “providing a **branch** of software source file...”; which may be interpreted as providing a specific location (branch) in an organization for the specific software or creating a specific software code file that is an extension (branch or child file) of software that already exist (parent file). In the latter case, the branch would merely represent the extension file (child file). Therefore, it is not clear which is represented by the “**ED branch**”. Furthermore, in claim 3 it is not clear what a “pre-integration branch” is, see again the discussion above. It is also not clear, in claim 1, what is intended by the step of “providing...file...”. It is not clear if a file already exist and the applicant merely enables access to it or if the file is created. The dependent claims do not overcome the problems that occurs initially in claim 1.

Claims 8-13 (specifically, step a) have the same type of problems as claims 1-7 above via the feature of “a branch of a software source code file...” being “called an ED branch”. The dependent claims do not overcome the problems of its respective parent claim.

Claims 14-18 indicate (specifically in step b) “a pre-integration branch of the software system code base” and “a development branch...”, which could also be locations in an organization or extensions of code that already exist. Again, the dependent claims do not overcome the problems of its respective parent claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8-9, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lundin et al. (5,339,430 - 8/16/94). Lundin claims a system for releasing software, which supports new features or platforms. The claims are now presented in a side by side manner with the teachings of Lundin.

Claims

1. A release control method for providing early deployment releases of a software system, the early deployment releases containing support for new features and platforms, the method comprising the steps of:

a. Providing a branch of a software source code file designated for incorporation of support for new features and platforms hereinafter called an ED branch;

b. Committing pre-tested source code for

Lundin

see col. 5 lines 13-26, which clearly indicates that changes can be made later to program units (ie. Early Releases are provided). Column 7 lines 27-39 indicates that new Features are supported; while, the Abstract indicates that new platforms Are supported via its "language Independent" interface. "Providing" is considered creating a new program, see again the reference to Col. 7 above.

In reference to the providing step, See again the reference to col. 7 Above. Lundin also indicates that his System provides a branch (creates a Parent file from an existing file), see Col. 6 lines 47-56 and col. 7 lines 2-11 (hierarchical...levels - branch).

See col. 3 lines 48-57, col. 7 lines 2-

new features and platforms into the ED branch; and

39 (committing - all changes are Approved; and pre-tested - adequately tested). Also, see col. 8 Lines 8-14, which indicates that Testing occurs before approval (Committing). Therefore, software is Pre-tested.

c. Using the ED branch, generating a new early development release containing pre-tested source code for new features and platforms.

See col. 10 lines 29-53. The linking Of individual calls enables "using" the new release features and Platforms are indicated above.

2. The release control method of claim 1 comprising the additional step of repeating steps b and c on a regular recurring basis for a fixed number of cycles.

In reference to the repeating process, The feature is considered inherent to Enable multiple changes and fixes to Occur to software, see col. 8 lines 1-22. Lundin allows daily updates (Regular recurring) until software reaches the highest level (which is Inherently Fixed (based on the number of modules updated) when no errors exist in the initial releases.

3. The release control method of claim 1 wherein the committing step comprises committing pre-tested source code for new features and platforms from a pre-integration branch into the ED branch.

The pre integration branch is taught Via the various levels indicated, see col. 7 lines 2-11 (a hierarchical set of software levels). Note again that col. 7 lines 27-57 indicates the various Levels, with pre-tested software Being committed for release.

Claims 8-9 are merely system claims utilized to execute the steps of claims 2-3, respectively and are therefore rejected for the same reasons.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-7, 10-13 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lundin as applied to claim 2 above, and further in view of Hutton (1988 IEEE) and the applicant's choice of design.

Claims

4. The release control method of claim 2 wherein the regular recurring basis is approximately every 8 weeks.

Lundin/Hutton

Lundin teach all features of the applicant's claim except the feature of indicating a specific time period (8 weeks) of releasing software. However, the Hutton teaches, on page 182 in the 1st complete paragraph, that small program fixes And enhancements are released about Every two weeks. Therefore, a "Regular recurring basis" is indicated. Although Hutton does not specifically indicate that releases Occur approximately every 8 weeks, The feature is inherent to Hutton's System since every fourth release Represents an 8-week period. Furthermore, a specific day, week or Month for a release is considered a Choice of design since it is based on The amount of resources allocated To a project, the number of Employees available for the project And the number of fixes or enhancements expected. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify

Lundin's system with the preset release period taught by Hutton to satisfy requirements of a specific contract (every two weeks) and to further limit releases to eight weeks based on the amount of resources, Time, personnel provided to ensure That each specific contract Requirement is fulfilled.

5. The release control method of claim 2 wherein the fixed number of cycles is 5 or more.

See the rejection of claim 4, supra. The feature of fixing the number of Cycles is considered fixing the Number of problem fixes or program Enhancements. This feature is also Not specifically taught by either Lundin or Hutton; however, the Feature as the 8-week period is Considered a choice of design to Fulfill a specific contract. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention to a person of ordinary skill in the art at the time of the invention to modify Lundin/Hutton to set a fixed number of cycles (minimum of 5) for fixing Or enhancing a program to ensure that It functions as intended initially and provide for desired features (enhancements) that may not have been considered to ensure that the system does not become outdated to ensure that the program functions as intended.

6. The release control method of claim 2 wherein repeated releases created by repeating steps b and c on a regular recurring basis for a fixed number of cycles comprise steps of generating a fat release followed by a thin

This feature is also considered a choice of design in view of Lundin/Hutton. The feature is Considered synonymous with Providing a program update (fat

release alternating in such fashion throughout the fixed number of cycles.

release) followed by one fix (thin Release) or merely providing one Enhancement to an update. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the feature in Lundin/Hutton's system to enable A single update or enhancement to each release in systems with low budgets to ensure that each release stays within a specified budget, which is substantially similar to Hutton's yearly release followed by an incremental release in the second Paragraph of page 181.

7. The release control method of claim 6 wherein alternating releases are releases of new versions of an internetworking operating system (IOS).

In reference to alternating releases, See the rejection of claim 6, above. As per the releases being new Versions of an IOS, the selection of The specific application being updated (drivers, interface (Lundin), Libraries (Hutton, which is capable of inherently supporting any desired type of software), operating Systems, etc.), the feature is not Specifically suggested by any of the References cited. However, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Lundin/Hutton to specify the type of software (IOS) being updated to enable the updates to programs that the user requires. The modification Would have been obvious to enable selection of a specific program (IOS) to update to ensure that various Stations are able to properly function and communicate.

Claims 10-13 are merely system claims utilized to execute the steps of claims 4-7, respectively. Therefore the claims are rejected for the same reasons as claims 4-7.

Claims 14-18 are method claims for controlling the frequency of release that utilizes a selection step in claim 14. Although the selecting step is not specifically indicated in Lundin/Hutton, it is inherent that selections are made to approve fixes and enhancements, see again Lundin's col. 7 lines 2-11 and col 8 lines 9-14. Therefore, claims 14 and 18 are rejected as claim 4. Claim 15 is rejected as claim 4 in view of claim 3. The features of claim 16 are rejected as claim 4 in view of claim 2 and claim 17 is rejected as claim 4 in view of claim 6.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Chavis whose telephone number is (703) 305-9665. The examiner can normally be reached on Monday-Friday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse, can be reached on (703) 308-4789. The Official Fax Numbers for TC-2100 are:

| | |
|---------------------------|-----------------------|
| After-final | (703) 746-7238 |
| Official | (703) 746-7239 |
| Non-Official/Draft | (703) 746-7240 |

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.



JQC
April 5, 2002



John Chavis
Patent Examiner